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# **Understanding Municipal Securities Regulations**

## **“Good Disclosure: It’s IN the Process”**

Julia H. Cooper  
Deputy Director of Finance  
City of San Jose  
November 15, 2007

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# Good Disclosure – What is it?

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- Primary Disclosure
  - Development of the Official Statement
  - Providing Financing Team with documents and tools to prepare primary disclosure
  
- Secondary Market Disclosure
  - Annual Report pursuant to requirements of Continuing Disclosure Agreement/Certificate
  - Comprehensive Annual Financial Report
  - Material Event Notices

# Primary Disclosure -- Official Statement

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- SEC has made it very clear – ***issuer is primarily liable for contents of its official statement***
  - *“In authorizing the issuance of securities and related disclosure documents, a public official may not authorize disclosure that the official knows to be false; nor may a public official authorize disclosure while recklessly disregarding facts that indicate there is a risk that the disclosure may be misleading”*
- Disclose ***all*** material facts
  - Rule 10b-5 Anti-fraud provisions
  - ***Do not omit*** or ***misstate*** any material fact
- What is material?
  - Important fact to investor in making a decision to purchase the bonds

# Official Statement – Key Elements

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- Description of bonds
- Security & source of repayment
- Estimated Sources & Uses
- Project
- Issuer
- Risk Factors
- Continuing Disclosure
- Concluding Information
  - Tax matters
  - Ratings
  - Litigation
  - Financial interests
- Appendices
  - Economic, Financial & Demographic on Issuer
  - Audited Financials
  - Form of Bond Counsel Opinion
  - Summary of Legals
  - Credit Enhancement

# Secondary Market Disclosure – Key Points

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- Preparation of Annual Report, Comprehensive Annual Financial Report, Material Event Notices
- Same standard of care as in preparation of primary market disclosure
- Considerations for Discussion
  - Who prepares and files – centralization generally better
  - Ensure consistency in information disseminated
  - Designate Key City contact for disclosure decisions
  - What makes an event material?
  - Who are the core members of your “disclosure team”?

# San Jose Experience – Educational Process

- Active education and dialogue with City Council on matters related to disclosure and financial matters
- Audited Financial Statements presented to City Council within 5 months after end of Fiscal Year (year)
  - Since FY 2001-02 Statements of Principal Financial Officer and City Manager included in CAFR

**Statement Under Oath of Principal Financial Officer Regarding Facts and Circumstances Relating to the Comprehensive Annual Financial Report (CAFR) For the Fiscal Year Ended June 30, 2006**

I, Scott P. Johnson, Director of Finance, state and attest that:

(1) To the best of my actual knowledge and belief, based upon a review of the covered reports of the City of San Jose, and, except as corrected or supplemented in a subsequent covered report:

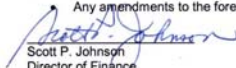
- The covered report is accurate in all material respects; and
- Is reported in a manner designed to present fairly the financial position and results of operations of the City; and
- No covered report contained an untrue statement of a material fact as of the end of the period covered by such report; and
- No covered report omitted to state a material fact necessary to make the statements in the covered report, in light of the circumstances under which they were made, not misleading as of the end of the period covered by such report.

(2) Each year, upon completion of the City's annual audit of its Financial Statements, City staff, along with the City's external Certified Public Accountant (CPA) auditing firm, present the City's Financial Statements and related independent auditor's report thereon to the Making Government Work Better (MGWB) Committee which then reports out to the full City Council. I will review the contents of this statement with the City Council's MGWB Committee, which functions as the Council's audit committee, at a regularly noticed meeting of the Committee in October of 2006.

(3) In this statement under oath, each of the following, as filed with the City Clerk, is a "covered report":

- The 90<sup>th</sup> Comprehensive Annual Financial Report of the City of San Jose for the fiscal year ended June 30, 2006;

Any amendments to the foregoing.

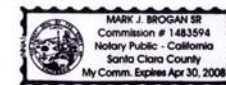
  
Scott P. Johnson  
Director of Finance

State of California, County of Santa Clara

On 10/6/06 before me, Mark J. Brogan, Sr., Notary Public, Personally appeared Scott P. Johnson, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

  
Mark J. Brogan, Sr., Notary Public



# **San Jose Experience – Evolving Process**

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- Appendix A – General City Information prepared and updated by City staff
- Actively engage more members of City staff in primary disclosure process
  - Budget Office
  - Retirement
  - Public Works
- Hire separate Disclosure Counsel

# San Jose Experience – Evolving Process

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- Gather relevant documents and provide to all members of the financing team
- Engage in attorney-client conversations
- Think beyond the financing schedule
  - What documents or information are scheduled to be released, for example Budget and Planning
  - Keep entire financing team apprised of the status of new or emerging information



# San Jose Experience – Evolving Pension Disclosure

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- Growth in sheer volume of pension disclosure
  - September 2003 to June 2007
  - Increased from 2 pages to 13 pages
  - Includes education and definitions in disclosure
  - Inclusion of supplemental actuarial analysis and projections
- Extensive review, each and every time center capital markets, by Retirement staff, City Attorney's Office and Disclosure Counsel
- Pressure to disclose potential new legislation
  - How to place dollar figure on costs?
  - How to appropriately respond?

# San Jose Experience – Constant Challenges

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- How do we ensure the right people in the room?
- Are we disclosing enough or too much?
- How do we get other City staff engaged in the conversation?
- How do we avoid/minimize “*Disclosure Creep*”?

# Opportunities for Streamlining and Efficiencies

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- Create an e-mail address for notification purposes – not individual
  - [debt.management@sanjoseca.gov](mailto:debt.management@sanjoseca.gov)
- Create electronic ticker system for staff
- Monitor for compliance on regular basis
- Read/review financial documents distributed by your organization
- Invest in Adobe Professional and scanning capabilities
- Use of secure websites for document distribution in bond issuance development process

# Key Points We ALWAYS Remember

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- Disclosure is the CITY'S responsibility
- Cannot rely on consultants – be active & involved IN the process
- Disclosure is hard work and is NEVER done
- Critical to San Jose's success or failure in marketplace
- Never exciting to anyone else in San Jose
- Must be tenacious and persistent
- Continually looking for ways to streamline process